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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------------|-----------------------------|
| 10/501,345 | 07/26/2004 | Jeannot Hironimus | 255484US6PCT | 6095 |
| 22850 7590 12/17/2007 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314 | | | EXAMINER KOVACS, ARPAD F | |
| | | | ART UNIT 3671 | PAPER NUMBER |
| | | | NOTIFICATION DATE 12/17/2007 | DELIVERY MODE ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/501,345 | HIRONIMUS ET AL. | |
| | Examiner | Art Unit | |
| | Árpád Fábián Kovács | 3671 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-26, 31-41 and 43 is/are rejected.
- 7) ☒ Claim(s) 27-29 and 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 31, 36, 38-41, 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In re cl. 31: "the strip of land" lacks positive antecedent basis in the claim;

In re cl. 36: "an inner end" is confusing, since the same recitation already claimed in the parent claim 16.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 16-26, 31-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aron (FR '189, cited in previous Office Action), in view of Reynolds ('284) and/or Jennings ('092, '826) and/or MacMaster et al ('803) and/or Ehrhart et al ('125, '129) and/or Leshner et al ('154) and/or Baril et al ('860) and/or Sudbrack et al ('496) and/or Delperdang et al ('717, '139) and/or van der Lely et al ('051).

Following is the rationale for arriving at a conclusion of obviousness in substituting one known crop handling material with another:

- (1) Aron discloses a machine for handling products (windrower) lying on the ground, which does not include a cutting blade, which machine includes two side by side devices carrying out

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said function, and in between them is a strip of land that is being cleared by at least one rake, whereas the at least rake is featured in multiple embodiments (see below) and in front of said machine or devices the product, these embodiments are:

fig 6-7: two offset raking disks capable to rotate about a horizontal axis & to form a truncated V & connected to supports on the main frame & friction driven & comprises circular support fitted with teeth (see drawings below; embodiment I outlined in dependent claims 17-21, 30, 32);

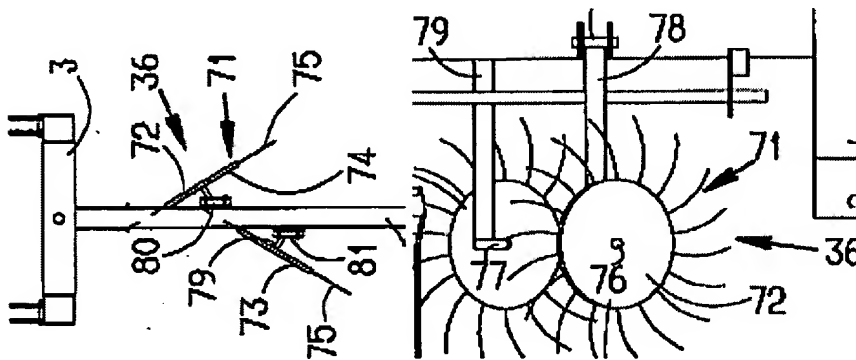
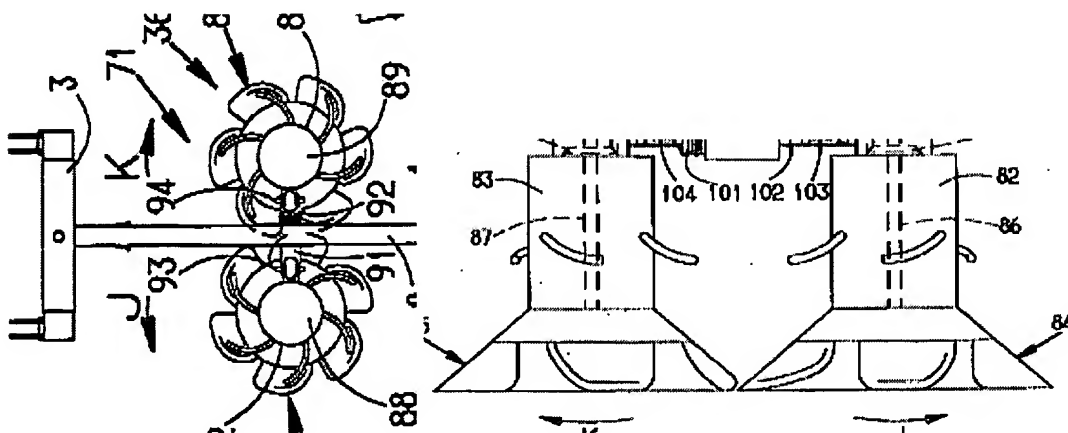


fig 8-10: two offset raking drums capable to rotate about a vertical axis & to turn away from another, having lower part flexible skirt & above it driving elements (see drawings below; embodiment II outlined in dependent claims 22-26).



(2) Reynolds ('284) and/or Jennings ('092, '826) and/or MacMaster et al ('803) and/or Ehrhart et al ('125, '129) and/or Leshner et al ('154) and/or Baril et al ('860) and/or Sudbrack et al ('496) and/or Delperdang et al ('717, '139) and/or van der Lely et al ('051) an improved way of handling crop, esp. into windrows, i.e. the use of pickup & conveyor that can be in a reverse, i.e. direction that would move the products toward the middle portion of the machine; therefore Reynolds ('284) and/or Jennings ('092, '826) and/or MacMaster et al ('803) and/or Ehrhart et al ('125, '129) and/or Leshner et al ('154) and/or Baril et al ('860) and/or Sudbrack et al ('496) and/or Delperdang et al ('717, '139) and/or van der Lely et al ('051) discloses a known means of handling crop.

(3) One of ordinary skill could have replaced the windrow rakes 12 & 13 of Aron and applied the known alternative and/or substituted one known element (rakes) for another (pickup & swathing) and the results of the substitution would have been predictable.

The claim would have been obvious because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

5. Claims 16-26, 31-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ender et al ('766) and/or Dow et al ('757), in view of Aron (FR '189, cited in previous Office Action, see details above).

Following is the rationale for arriving at a conclusion of obviousness in using a known technique to improve similar devices in the same way:

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(1) Ender discloses a machine having pickup means, first & second swathing devices which are configured to reverse direction so as to move products toward the middle portion & having 4 wheels as claimed (see fig 1); and/or similarly Dow discloses similar machine having similar capability as claimed (see fig 4, 5).

(2) Aron discloses that in front of the rakes can be improved by clearing the land strip between the windrowers using at least rakes and/or disks, as shown in the 2 embodiments outlined above.

(3) One of ordinary skill could have applied the improved land clearing rakes and/or disks, thereby more effectively clearing the product lying on the ground.

The claim would have been obvious because the technique for improving a particular class of devices was part of the ordinary capabilities of a person of ordinary skill in the art, in view of the teaching of the technique for improvement in other or similar situations.

See relevant quotes from KSR v. Teleflex

- a. "Patent for a combination which only unites old elements with no change in their respective functions . . . obviously withdraws what is already known into the field of its monopoly and diminishes the resources available to skillful men." Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Corp., 340 U. S. 147, 152 (1950).
- b. Often, it will be necessary for a court (**read: patent examiners**) to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.
- c. As our (**The supreme court's**) precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ. (KSR v. Teleflex)
- d. a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. (KSR v Teleflex)

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- e. Finally, in *Sakraida v. AG Pro, Inc.*, 425 U. S. 273 (1976), the Court derived from the precedents the conclusion that when a patent "simply arranges old elements with each performing the same function it had been known to perform" and yields no more than one would expect from such an arrangement, the combination is obvious. *Id.*, at 282.
- f. Common sense teaches that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.

Allowable Subject Matter

6. Claims 27-29, 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 39-41, 43 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments with respect to claims 16-43 have been considered but are moot in view of the new ground(s) of rejection.

NOTE: as stated in the previous Office Action, claims 22-26 have been examined; therefore, these claims should not be in withdrawn status. Appropriate correction is required.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábíán Kovács whose telephone number is 571 272 6990. The examiner can normally be reached on Mo-Th.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272 6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Arpad F Kovacs/
Árpád Fábián Kovács
Primary Examiner
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AFK